

June 5, 2000

D.T.E. 00-39

Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 CMR

§§ 2.00 et seq., to promulgate regulations governing an expedited dispute resolution process for complaints involving competing telecommunications carriers as 220 C.M.R. §§ 15.00

et seq.

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ORDER INSTITUTING RULEMAKING

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- INTRODUCTION

In the Department of Telecommunications and Energy's ("Department's") recently issued Order in Bell Atlantic Tariffs Nos. 14 and 17, D.T.E. 98-57, at 161-162 (2000), the Department indicated its intent to open a proceeding to establish expedited dispute resolution procedures for disputes between competing telecommunications carriers. In that Order, the Department concluded that the formal complaint procedures currently in place were too cumbersome and slow to adequately address many local competition disputes, and that the delays inherent in the process unfairly advantaged the incumbent provider. Id. at 161. In this Order Instituting Rulemaking, the Department opens the proceeding envisioned in

D.T.E. 98-57, and seeks to facilitate increased competition for telecommunications services by offering an option for prompt resolution of disputes between carriers.

## II. PROPOSED REGULATIONS

This Order opens a rulemaking to create regulations governing an expedited dispute resolution process for complaints involving competing telecommunications carriers under the jurisdiction of the Department. The Department proposes several new regulations in the new section 220 C.M.R. §§ 15.00 et seq., which, once in effect, will provide quicker resolution of certain complaints brought to the Department. These proposed regulations are modeled in large part after the Federal Communications Commission's Accelerated Docket Procedures as discussed in Implementation of the Telecommunications Act of 1996, Amendment of the Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, Second Report & Order, 13 FCC Rcd 17018 (1998). See 47 C.F.R. § 1.730.

The Department proposes the creation of an Accelerated Docket wherein dispute proceedings are subject to shorter pleading deadlines and certain other procedural rules that do not apply to other formal complaint proceedings before the Department. 220 CMR

§ 15.03(1). Either party may request inclusion on the Accelerated Docket, but must demonstrate that the parties attempted in good faith to resolve their dispute between themselves for a minimum of ten days before coming to the Department. 220 CMR §§ 15.03(1-3), 15.04(3).

The proposed rules establish that, before determining whether to admit a proceeding onto the Accelerated Docket, Department staff will schedule and supervise informal mediation sessions between the parties during the twenty-day period following receipt of the request for expedited review. 220 CMR § 15.03(5). During this twenty-day period, the

Department will decide whether the proceeding is appropriate for inclusion on the Accelerated Docket. 220 CMR § 15.04(5). This analysis will involve several factors, including, among others, whether the issues are suited for decision under the time constraints of the Accelerated Docket, whether the parties have exhausted their opportunities for settlement negotiations, whether inclusion on the Accelerated Docket would be unfair to one party because of an overwhelming disparity in the parties' resources, whether it is likely persons in addition to the complainant and respondent will be substantially and specifically affected by the proceeding, and whether the complainant states a claim that falls within the Department's jurisdiction. 220 CMR

§ 15.04(2). We anticipate that primarily single issue, two-party disputes will comprise the complaints on the expedited schedule; therefore intervention will be limited consistent with G.L. c. 30A and with the scope of the expedited proceedings.

The Department proposes that if a proceeding is accepted on the Accelerated Docket, the complainant will file its complaint with the Department and serve a copy on the Department staff that supervised the pre-filing mediation discussions. 220 CMR §§ 15.05(1), 15.03(6). The same staff may also participate in the formal adjudication phase of the Accelerated Docket proceeding. The respondent will have seven days to file its answer. 220 CMR §§ 15.05(4). If a complaint is accepted onto the Accelerated Docket, notice of the acceptance will be given to the parties and posted on the Department's website. 220 CMR

§ 15.04(5). If it appears at any time that a proceeding on the Accelerated Docket is no longer appropriate for such treatment, Department Staff may remove the matter from the Accelerated Docket either on its own motion or at the request of any party. 220 CMR § 15.04(4). There will be automatic document disclosure provisions and other options for limited discovery. 220 CMR § 15.06. Nine days after the answer is filed, the Department will hold an initial status conference. 220 CMR § 15.07(1). Two days before the initial status conference, the Department proposes to require statements from the parties indicating stipulated and disputed facts or legal issues. 220 CMR §§ 15.07(4), (5).

The proposed rules establish an expedited hearing to be held 31-34 days after the complaint is included on the Accelerated Docket. 220 CMR § 15.08(1). Three days prior to the hearing, the parties will exchange witness and exhibit lists. 220 CMR § 15.08(3). Two days before the hearing, the parties will file proposed findings of fact and conclusions of law. 220 CMR § 15.08(5). During the hearing, the parties will adhere to strict time limits to present evidence and make argument. 220 CMR § 15.08(2). Within three days after the hearing, the parties may file revised proposed findings of fact and conclusions of law along with a short position statement. 220 CMR 15.08(5). The Department proposes that Department staff will issue a written recommended decision no more than 52 days after the complaint was docketed, appealable to the full Commission within five days. 220 CMR

§ 15.09. If the staff recommended decision is not appealed within five days, the Commission will concur with the staff recommended decision. 220 CMR § 15.09. If the

staff recommended decision is appealed, a Commission order on appeal will be issued within ten days of the filing of the appeal. 220 CMR § 15.09.

A copy of the proposed regulations is attached.

### III. SOLICITATION OF COMMENTS

The Department seeks written comments on these proposed regulations to 220 C.M.R. §§ 15.00 et seq. no later than 5:00 p.m. on June 28, 2000, and reply comments no later than 5:00 p.m. on July 21, 2000. In addition, all written comments shall be limited in length to a maximum of 20 one-sided, double-spaced type-written pages. Initial and reply comments should be filed with Mary L.Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, 2<sup>nd</sup> Floor, Boston, Massachusetts 02110. Also, the Department requests electronic copies of written comments by either an IBM compatible, high-density diskette formatted for WordPerfect 5.0 or higher, or an e-mail attachment to [Kimberly.Tran@state.ma.us](mailto:Kimberly.Tran@state.ma.us) (the file name should end with ".wpd").

To provide further opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, and 220 C.M.R. § 2.05, the Department will hold a public hearing on July 7, 2000, at

10:00 a.m., at the Department's offices, One South Station, Boston, Massachusetts. Interested persons may present facts, opinions, or arguments relating to the proposed regulations at the public hearing.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner